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ARIZONA ATTORNEY GENERAL

June 11, 1954

The Honorable William P. Mahoney, Jr.
Maricopa County Attorney
Courthouse
Phoenix, Arizona

Attention: Mr. Joe Walton
Deputy County Attorney

Dear Mr. Mahoney:

In answer to your letter of recent date, we enclose our opinion setting forth the qualifications necessary to be a voter at school elections held under the provisions of Sections 54-414 and 54-419, A.C.A. 1939, as amended.

It is our opinion that a voter at a school election for trustees must be a registered voter of the State of Arizona and have been a resident of the school district for not less than six months immediately preceding the election. A voter, in order to qualify at a school election concerning a bond issue, must be a qualified elector as defined by Section 55-201, A.C.A. 1939, as amended, and must also be a real property taxpayer in the district affected. Regarding school elections called to decide upon the locating or relocating of school buildings, or the purchase or sale of school sites or school buildings, a voter thereto must be a real property taxpayer of the district affected and must, in all particulars, qualify under the provisions of Section 2 of Article 7 of the State Constitution.

We trust that the foregoing will answer your request. If you have any further questions along these lines, please feel free to write this office at any time.

Very truly yours,

EARL E. WEEKS
Assistant to The
Attorney General

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Enclosure -
Opinion No. 54-79

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LABORATORY
June 11, 1954
Opinion No. 54-79
ARIZONA ATTORNEY GENERAL

TO: The Honorable William P. Mahoney, Jr.
Maricopa County Attorney
Courthouse
Phoenix, Arizona

RE: Qualified voters at all
school elections.

QUESTION: Who are qualified electors
under the provisions of Sec-
tion 54-419, A.C.A. 1939, as
amended by Chapter 107, House
Bill 215, Twenty-first Legisla-
ture, Second Regular Session?

In your letter of recent date, you requested an opinion
from this office as to the necessary qualifications for voters
in school elections other than those held for the election of
trustees.

We will begin the discussion of this question by setting
forth Section 2 and Section 13 of Article 7 of the Arizona Consti-
tution regarding the qualifications for voters at general elec-
tions and voters on bond issues at school elections. Said sections
read as follows:

"§ 2. (Qualifications of voters.)--No
person shall be entitled to vote at any
general election, or for any office that
now is, or hereafter may be, elective by
the people, or upon any question which may
be submitted to a vote of the people, un-
less such person be a citizen of the United
States of the age of twenty-one years or
over, and shall have resided in the state
one year immediately preceding such election.
The word 'citizen' shall include persons of
the male and female sex.

The rights of citizens of the United States
to vote and hold office shall not be denied
or abridged by the state, or any political
division or municipality thereof, on account
of sex, and the right to register, to vote
and to hold office under any law now in

effect, or which may hereafter be enacted, is hereby extended to, and conferred upon males and females alike.

No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights.

* * * * *

§ 13. (Voters on bond issues.)--Questions upon bond issues or special assessments shall be submitted to the vote of real property taxpayers, who shall also in all respects be qualified electors of this state, and of the political subdivision thereof affected by such question."

Section 54-419, A.C.A. 1939, providing for school elections other than those held for the election of trustees, was amended by Chapter 107, Twenty-first Legislature, Second Regular Session, and as amended reads as follows:

"54-419. Special elections on bond issues and school property. (a) The board of trustees of any school district may, and upon petition of fifteen percent of the school electors, as shown by the poll list at the last preceding annual school election, shall call an election for the following purposes: 1. To locate or change the location of school houses; 2. to purchase or sell school sites or houses, or the building or school houses; 3. to decide whether the bonds of the district shall be issued and sold for the purpose of raising money for purchasing or leasing school lots, for building school houses, and supplying, the same with furniture and apparatus, and improving grounds, or, 4. for the liquidating of any indebtedness already incurred for such purposes.

(b) When the election is called to decide upon the locating or relocating of school buildings, or purchase or sale of school sites, or school buildings, the election shall be called and conducted as regular school elections, except as to the time of holding the election and the board of

trustees shall be governed by the vote of the majority on all questions submitted. When the election is called to determine whether or not the bonds of the district shall be issued and sold for the purposes enumerated in the call for the election, the question shall be submitted to the vote of the qualified electors of the district.

(c) In any election held under the authority of this section, only those electors who are real property taxpayers in the district affected are qualified to participate."

We call your attention to the fact that under sub-section (b) above, there are provisions for two types of elections. An election may be called for the locating or relocating of school buildings, or the purchase or sale of school sites or school buildings. An election may also be called to determine whether or not the bonds of the district shall be issued and sold for the purposes enumerated in the call for the election.

The question of issuance of bonds of the district must be submitted to a vote of the "qualified electors" of the district.

The qualifications for voters in an election on a bond issue are found in Article 7, Section 13 of the Constitution of Arizona set forth hereinabove.

Section 55-201, A.C.A. 1939, as amended, provides the answer as to who are qualified electors:

"55-201. Qualifications of elector.--

(a) Every resident of the state is qualified to become an elector and may register to vote at all elections authorized by law if he: 1. Is a citizen of the United States; 2. will be twenty-one (21) years of age or over prior to the regular general election next following his registration; 3. will have been a resident of the state one year and of the county and precinct in which he claims the right to vote thirty (30) days next preceding such election; (4) is able to read the Constitution of the United States in the English language in such manner as to show that he is neither prompted nor reciting from memory, unless

prevented from so doing by physical disability, and, 5. is able to write his name, unless prevented from so doing by physical disability.

(b) In any election held between the date of his registration and the next regular general election, the elector is eligible to vote if at the date of such intervening election he is twenty-one (21) years of age and has been a resident of the state one (1) year and of the county and precinct thirty (30) days.

(c) No person convicted of treason or a felony, unless restored to civil rights, nor an idiot, insane person or person under guardianship is qualified to register."

Summing up the qualifications as set forth in Article 7, Section 13 of the Constitution of Arizona, Section 55-201, supra, and sub-section (c) of Section 54-419, supra, we may conclude that a person qualified to vote on the question of the issuance of district bonds must be a qualified elector under the provisions of Section 55-201, supra, and, furthermore, he must also be a real property taxpayer in the district to be affected by the issuance of said district bonds.

There remains the matter of who is qualified to vote at an election called under the provisions of Section 54-419, supra, to decide upon the locating or relocating of school buildings, or the purchase or sale of school sites or school buildings.

Prior to its amendment by virtue of Chapter 107, Twenty-first Legislature, Second Regular Session, Section 54-414, A.C.A. 1939, read as follows:

"54-414. Qualification of voters --
Powers of election officers -- Tallier.
--Every person who is a qualified elector
of the state, and who has been a resident
of the district for thirty (30) days
immediately preceding the day of election,
and who is the parent or guardian of a minor
child residing in the district, or who has
paid a state or county tax, exclusive of
poll, road or school tax, during the pre-
ceding year, is eligible to election to the
office of trustee, and is a qualified elector
at any school election. Either spouse is

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deemed a taxpayer on community property.
Any person offering to vote may be challenged,
and the election officers shall thereupon
have the powers and duties of general elec-
tion officers. The poll and tally list shall
be furnished by the state superintendent of
public instruction, and must be kept and
returned to the board of trustees."
(Emphasis supplied)

This section clearly described the qualifications of
electors at all school elections except those elections concern-
ing bond issues wherein it is necessary that each voter be a
real property taxpayer in the district affected.

Section 54-414, A.C.A. 1939, as amended by Laws of 1954,
Chapter 107, provides:

"54-414. Qualifications of voters and
trustees.--No person unless he is a regis-
tered voter of the state of Arizona and
has been a resident of the school district
for not less than six months immediately
preceding the election, is a qualified
elector at any school election for trustee
of the school district in which he resides.
Any person offering to vote shall sign an
affidavit stating his address and swearing
he is a qualified voter and has not voted
at the election being held. Any person
offering to vote may be challenged, and
the election officers shall thereupon have
the powers and duties of general election
officers. The forms for the affidavit,
poll and tally list shall be furnished by
the state superintendent of public instruc-
tion, and such affidavits, poll and tally
lists must be completed and returned to
the board of trustees to be kept by them
for a period of not less than five years.

No person, unless he is a registered
voter of the state of Arizona and has been
a resident of the district for one year
immediately preceding the day of election,
shall be eligible for election to the
office of trustee."

As a result of this amendment, Section 54-414, supra, now establishes the qualifications of an elector for voting at an election of trustees only.

It, therefore, becomes necessary to analyze the provisions of Section 54-419, supra, in order to determine what the qualifications are for a voter at an election called to decide upon the locating or relocating of school buildings, or the purchase or sale of school sites or school buildings.

The only qualification as set forth in Section 54-419, supra, for an elector to the type of school elections which we now have under consideration, is that said elector be a real property taxpayer in the district affected. However, a careful reading of Section 54-419, supra, indicates that the said qualification was set forth by the Legislature as a requirement in addition to those set forth in Article 7, Section 2 of the Constitution. In the case of ROBERTS v. SPRAY, 71 Ariz. 60, 223 P. 2d 808, the Supreme Court of Arizona had the question before it as to what were the necessary qualifications of an elector in an election called by the Board of Supervisors under the authority of Section 68-1405, A.C.A. 1939, as amended, for the purpose of determining whether or not there shall be organized a hospital district. The only qualification for an elector voting in that type of an election was found in Section 68-1405, supra, wherein the Legislature had provided:

"68-1405. Election to determine organization.--* * * Any resident, real property owner in the district shall be entitled to vote at such election. * * *"

The court, in answering the question of who were electors in an election concerning a proposed hospital district, and whether the "Hospital District Act of 1949" contravened the provisions of Sections 2 and 13 of Article 7 of the Arizona Constitution, had this to say:

"Sections 2 and 13, article 7, of the state constitution are self-executing and require no legislation to make them operative. Morgan v. Board of Supervisors, 67 Ariz. 133, 192 P.2d 236. The fact that a constitutional provision is self-executing does not necessarily exhaust legislative power on the subject but such legislation must be in harmony with the spirit of the constitution. The sum and substance of the various provisions in the Act relating

to qualifications of electors to vote in district elections is that--any resident real property owner in the district shall be entitled to vote at such election provided he is also a real property taxpayer therein. The other provisions thereof using the words 'electors,' 'real property taxpayers', 'real property taxpaying electors', 'electors residing (with) in the district' are all encompassed in the above requirement. These provisions merely add to the requirements of section 2, article 7, that the voter must be a resident real property owner in the district to be able to vote. It adds to section 13 of article 7 the requirement that the real property owned by the taxpayer must be in the district affected to enable such real property taxpayer to vote. These requirements are in complete harmony with sections 2 and 13 of article 7, supra. If the sections of the constitution defining the qualifications of voters is self-executing, it was not necessary for the legislature to incorporate the contents thereof in the Act in question. It is only by treating the language used relating to qualifications of voters as an attempt to reduce the standards fixed by the constitution for the exercise of the elective franchise that we would be justified in holding the Act unconstitutional. If it is treated as adding further requirements for qualifications to vote in a district election such as requiring the elector to be a real property owner or taxpayer within the district it was clearly within the legislative power and creates no conflict at all with the constitution."

We feel that the foregoing holding of our Supreme Court completely answers the question under consideration and that there is nothing more that we can add thereto.

Based on the foregoing, it is the opinion of this office that a voter at an election for trustees must meet the requirements of Section 54-414, supra, which are self-explanatory. A voter to a school election concerning a bond issue must be a qualified elector

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as defined by Section 55-201, supra, and must also be a real property taxpayer in the district affected.

It is our further opinion that a voter at an election called to decide upon the locating of school buildings, or the purchase or sale of school sites or school buildings, must be a real property taxpayer of the district affected and must, in all particulars, qualify under the provisions of Section 2 of Article 7 of the State Constitution.

ROSS F. JONES
The Attorney General

EARL E. WEEKS
Assistant to The
Attorney General